

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

Jonathan R., minor by Next)	
Friend Sarah DIXON, <i>et al.</i>,)	
)	
)	
<i>Plaintiffs,</i>)	Case No. 3:19-cv-00710
v.)	
Jim JUSTICE, in his official capacity as)	
the Governor of West Virginia, <i>et al.</i>,)	
)	
<i>Defendants.</i>)	

PLAINTIFFS' MOTION FOR MODIFICATION OF SCHEDULING ORDER

Plaintiffs request a modification of the scheduling order entered on June 7, 2021, which contemplated August 20, 2021, as the last date to serve discovery requests and October 4, 2021, as the last date to complete depositions. (ECF 209.) That order was entered before the Court's July 28, 2021 dismissal of this case (ECF 258), and the Fourth Circuit's judgment reversing that dismissal, which took effect on August 23, 2022. (ECF 270.) However, since the Fourth Circuit's judgment took effect, an amended scheduling order has not yet been put in place, resulting in disagreement between the parties as to how, or whether, discovery can proceed.

Defendants moved to stay all discovery on September 20, 2022. (ECF 275.) Plaintiffs opposed this motion on September 23, 2022. (ECF 277.) In September, this Court ordered a stay on discovery for a limited period of two weeks to allow the parties to engage in negotiations regarding outstanding discovery disputes, including the issue of whether Plaintiffs were entitled to additional discovery prior to a ruling on class certification. (ECF 281.) Defendants sought, and Plaintiffs did not oppose, a stay of an additional week to continue negotiations (ECF 282), but no resolution was reached for the reasons explained in Plaintiffs' October 19, 2022 status report. (ECF

286.) The Court has not yet resolved Defendants' motion to stay discovery. Plaintiffs asserted then, and maintain now, that a stay on discovery in this case, which Plaintiffs filed over three years ago, is both improper and inappropriate. As Plaintiffs explained in their opposition to Defendants' motion to stay discovery, Plaintiffs' requested discovery depends on neither a decision on the remaining issues in Defendants' motion to dismiss nor on a decision on Plaintiffs' motion for class certification. (ECF 277.) Plaintiffs believe that discovery is ongoing, and that, in fact, discovery must go forward while the Court resolves any pending motions before it, including Defendants' motions for a stay and dismissal on Rule 12(b)(6) grounds and Plaintiffs' motion for class certification.

Accordingly, Plaintiffs request modifying the scheduling order as follows:

Deadline	Date
Period for written discovery requests	Present – 6 months after the motion for class certification is decided
Opening Rule 26 expert disclosures	6 months after motion for class certification is decided
Responsive Rule 26 expert disclosures	7 months after motion for class certification is decided
Rebuttal Rule 26 expert disclosures	7.5 months after motion for class certification is decided
Close of discovery (i.e., deposition deadline)	8 months after the motion for class certification is decided
Dispositive motion deadline	9 months after the motion for class certification is decided
Response to dispositive motions	Specific dates to be determined, once motion for class certification is decided
Reply to response to dispositive motions	
Settlement meeting	
Proposed pre-trial order to Defendants	
Integrated pre-trial order	
Motion in limine deadline	
Responses to motions in limine deadline	
Pretrial conference	

Final settlement conference	
Proposed trial	
Trial	

Plaintiffs' proposed schedule sets discovery deadlines that take into account the significant discovery delays and deficiencies that have impeded timely resolution of this litigation from the beginning. Plaintiffs described some of those issues in their unopposed July 20, 2021 motion to modify the scheduling order by extending the deadline for expert disclosures by 60 days.¹ (ECF 247.) Those issues include: 1) a four-month stay on discovery, delaying the resolution of pending discovery requests; 2) Defendants' months-long delays in producing responsive documents; 3) serious discovery deficiencies such as Defendants' failure to produce any documents at all for many discovery requests; and 4) inappropriate and overbroad redactions in many documents Defendants did produce that conceal important and relevant information.

On December 15, 2022, the parties conferred prior to Plaintiffs' filing of this motion to modify the scheduling order. Plaintiffs understand Defendants' position to be that the discovery period has closed and cannot be reopened until the Court enters a scheduling order indicating otherwise. However, by filing a motion to *stay* discovery only three months ago, Defendants concede that the discovery period did not close in October 2021 pursuant to the scheduling order issued in June 2021. Additionally, nowhere in that motion did Defendants argue that discovery could not go forward due to the June 2021 scheduling order. To the extent that Defendants make that argument now, it is merely a second bite at the apple—a contrivance to create delay and shirk their ongoing discovery obligations.

¹ Because the Court issued its opinion dismissing this case on July 28, 2021, Plaintiffs' motion to modify the scheduling order was not resolved.

For the foregoing reasons, Plaintiffs request the above modification to the scheduling order.

Respectfully submitted,

Dated: December 19, 2022

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FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

**Jonathan R., minor by Next
Friend Sarah DIXON, et. al.,**

Plaintiffs,

v.

**Civil Action No. 3:19-cv-00710
Judge Johnston**

**Jim JUSTICE, in his official capacity as
The Governor of West Virginia, et. al.,**

Defendants.

CERTIFICATE OF SERVICE

I, J. Alexander Meade, counsel for the plaintiffs herein, hereby verify that on this 19th day of December, 2022, I electronically filed the foregoing “**Plaintiffs’ Motion for Modification of Scheduling Order**” with the Clerk of the Court via the CM/ECF system, which will electronically serve and notify counsel of record as follows:

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